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IN THE

Supreme Court of the United States

October Term, 1965
No. 771

DAVID ARENDT BATES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on October 26, 1965.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is printed in Appendix A hereto.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on October 26, 1965. The United States District Court for the District of Nevada had jurisdiction by virtue of 18 U.S.C. § 472, 18 U.S.C. § 474, and 18 U.S.C. § 3231. The United States Court of Appeals for the Ninth Circuit had jurisdiction pursuant to 28 U.S.C. §1291 and 28 U.S.C. §1294. The jurisdiction of this court is invoked under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

1. Whether the petitioner's arrest without a warrant for his arrest was based on probable cause and therefore lawful.

2. Does the petitioner's mere presence at and near the vicinity where counterfeit twenty dollar Federal Reserve Notes were passed by an unidentified individual legally constitute the petitioner an aider and abetter.

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

Title 18, United States Code, Section 472, provides in pertinent part:

> "Whoever, with intent to defraud, passes, utters, publishes, or sells, . . . any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both."

Title 18, United States Code, Section 474, provides in pertinent part:

> " . . . Whoever has in his possession or custody, except under authority from the Secretary of the Treasury, or other proper officer, any obligation or other security made or executed, in whole or in part, after the similtude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; . . ."

"shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both."

California Penal Code, Section 863, provides in pertinent part:

"A peace officer may make an arrest in obedience to a warrant, or may, without a warrant, arrest a person:

'. . .

(3) Whenever he has a reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed.' "

STATEMENT

The petitioner was charged in a two count indictment for violations of *18 U.S.C.* §*472* and *18 U.S.C.* §*474*. He was tried by a jury in the United States District Court for the Southern District of California, Central Division. The jury returned a verdict of guilty for each count of the indictment. Jurisdiction was conferred on the trial court by virtue of *18 U.S.C* §*472*, *18 U.S.C.* §*474*, and *18 U.S.C.* §*3231*.

The evidence before the trial court showed that on August 6, 1964, a man in his fifties, with greyish hair, a moustache, and well groomed, changed a $20 bill at the Lucky Market in Lynwood, California. The $20 bill aroused the suspicions of the grocery checker who received the $20 bill. The same individual cashed another $20 bill in the liquor section of the Lucky Market.

The manager of the Lucky Market made a comparison of the two $20 bills and found thay had identical serial numbers. The Lucky Market manager observed the individual that had passed both $20 bills leave the market and enter the passenger side of a late model Cadillac Convertible. The manager, after writing down the license number of the car, telephoned the Lynwood Police and reported the $20 bills and furnished a description of the individual and the car.

Moments later, a tow truck operator, having heard a police broadcast, noticed a late model Cadillac that fitted the descrip-

tion of an automobile mentioned on the police broadcast. The automobile contained two occupants. The tow truck operator telephoned this information to the Lynwood Police Department.

Sergeant Burns of the Lynwood Police Department in response to a police broadcast proceeded to the area where the tow truck operator had seen the late model Cadillac. Sergeant Burns drove into the parking lot area of Von's Market and observed the petitioner placing an unidentified object in the trunk of a late model Cadillac convertible.

The Petitioner was accosted by Sergeant Burns and the petitioner readily admitted ownership of the Cadillac. The petitioner denied that anyone had been riding with him. A few seconds later another Lynwood police officer arrived and the petitioner was then patted down for weapons. The petitioner was required to empty the contents of his pockets on the hood of the police car, and was again searched. No counterfeit money was found on the petitioner, although Sergeant Burns examined the petitioner's paper money. Sergeant Burns then left the petitioner in the custody of the other police officer and went into Von's Market.

In a few moments, Sergeant Burns returned from Von's Market and spoke with the Lucky Market Store manager, who identified the petitioner's automobile as the same automobile entered by the passer of the $20 bills at the Lucky Market. A young lady also spoke with Sergeant Burns and told him a man resembling her father, in his fifties, tanned complexion, and well dressed, passed her on the Von's Market parking lot and was walking from the direction of the petitioner's automobile. The tow truck driver also arrived and identified the petitioner's car as the one he had seen moments earlier.

Sergeant Burns then places the petitioner under arrest for investigation of passing counterfeit money. At that point, no counterfeit bills had been found in petitioner's automobile or on his person. After arresting the petitioner, Sergeant Burns searched petitioner's automobile and found a paper shopping bag bag underneath the vehicle's right front seat. The shopping bag contained various denominations of legitimate currency. In the

booking tank of the Lynwood jail, during another search of the petitioner's person, the booking officer found twenty-eight $20 counterfeit Federal Reserve Notes with identical serial numbers.

The petitioner was not identified by the employees of the Lucky Market as being either the person that passed the two counterfeit $20 bills at that market or as the driver of the Cadillac Convertible. The petitioner was identified by the tow truck operator as the person driving the Cadillac convertible that was described in the police broadcast. The tow truck operator did not give this information to Sergeant Burns until after the petitioner was arrested.

REASONS FOR GRANTING THE WRIT

1. The court below, in its per curiam opinion, concluded that the petitioner's case was well within its decision in *Hollins* v. *United States*, 338 F.2d 227, (9th Cir. 1964), and this court's decision in *Draper* v. *United States*, 358 U.S. 307, 79 S.Ct. 329 (1959) and that the circumstances pointing to the petitioner constituted sufficient probable cause for his arrest without a warrant.

2. The decision of the court below is believed to be erroneous and probably conflicts with applicable decisions of this court concerning arrests without a warrant and probable cause. The court below fixed the time of petitioner's arrest as not earlier than the arrival of the tow truck operator. This court, in *Henry* v. *United States*, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959) decided, on the facts of that particular case, that an arrest took place when the arresting officers interrupted and restricted the subject's liberty of movement. Settlement of the question, when does an arrest take place is plainly in the public interest.

It would appear that the lower court's determination that probable cause existed for petitioner's arrest without a warrant is contrary to this court's decisions in *Brinegar* v. *United States*, 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949), and *Beck* v. *State of Ohio*, 379 U.S. 89, 85 S.Ct. 223, 11 L.Ed.2d 604 (1964) wherein this court held for a search or an arrest to be constitutionally valid, the officer at the moment of the search

or arrest must have probable cause based on information and facts, sufficient in themselves to warrant the belief in a prudent man that the subject had committed or was committing a crime.

The only facts known and available to Sergeant Burns, when he arrested the petitioner, and upon which the lower court based its decision, were: (1) counterfeit $20 bills had been passed at the Lucky Market; (2) by a police radio broadcast, he had been avdised to look for a late model Cadillac Convertible; (3) he had the description of the person passing the counterfeit bill; (4) the petitioner admitted ownership of the Cadillac; (5) the petitioner, after being searched, and prior to his arrest did not have any counterfeit bills.

The question herein presented is of vital importance in the law of arrest and search and seizure.

(3). The petitioner's second question touches on the law of aiding and abetting. The petitioner was not seen or identified as being at the Lucky Market when the counterfeit $20 bills were passed. The petitioner and an individual unknown to the grand jury were convicted of passing a single $20 bill.

The court below found this question of the petitioner to be without merit. Yet, other circuit courts of appeal have held that mere presence at the scene of a criminal offense is not sufficient to constitute aiding and abetting. *Newsom* v. *United States*, 335 F.2d 237 (5th Cir. 1964); *United States* v. *Paige*, 324 F.2d 31 (4th Cir. 1963); *United States* v. *Minieri*, 303 F.2d 550 (2nd Cir. 1962). The finding by the court below that petitioner's presence in the vicinity of the crime constitutes aiding and abetting is believed to be in conflict with the other circuit courts of appeal decisions.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

RAYMOND E. SUTTON
Counsel for Petitioner

November 19. 1965

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DAVID ARENDT BATES, *Appellant,* vs. UNITED STATES OF AMERICA, *Appellee.*	No. 20,009

[Oct. 26, 1965]

On Appeal from the United States District Court for the Southern District of California, Central Division

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Before: CHAMBERS and ELY, Circuit Judges, and TAVARES, District Judge.

Per curiam:

Bates was convicted of two counterfeiting counts (18 U.S.C. §474), one of possession and one of participating with another in passing a counterfeit treasury note. The sentences on the counts were concurrent.

An illegal search of Bates and his car is asserted. A motion to suppress the fruits of the search was made and denied. An officer had accosted Bates placing some packages in his Cadillac car. The automobile carried out-of-state license plates and was distinct in model and color. The officer already had reliable information that the vehicle fit the description of one which, very shortly before, had been entered by a person who had passed counterfeit money at a store in the near vicinity.

Interrogation began. It is arguable as to just when in the sequence of events the arrest was made. But almost at the very outset, and certainly by the time the first of the series of things

done that might be fixed as the time of arrest, one might say there was probable cause to arrest. For the benefit of defendant-appellant, we fix the time of the arrest as not earlier than the arrival of the tow truck operator at the scene who filled in chinks of circumstance to give probable cause.

Of course, at the time of the arrest, the circumstances pointing to Bates as a participant in counterfeit transactions were not iron clad, but they certainly pointed an accusing finger at him—enough for probable cause. The case is well within our Hollins v. United States, 338 F.2d 227, and Draper v. United States, 358 U.S. 307.

Appellant's other points go mainly to the second count. We find them without merit. But if they were meritorious, the conviction under the first count would stand. The sentences were wholly concurrent. See Sinclair's case, 279 U.S. 263.

The judgment of conviction is affirmed.